

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hena Zaman	Team: Team # 2	CCRB Case #: 200512602	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/19/2005 5:45 PM	Location of Incident: f/o § 87(2)(b) inside the 101 Precinct and at § 87(2)(b)	Precinct: 101	18 Mo. SOL 4/19/2007	EO SOL 4/19/2007	
Date/Time CV Reported Wed, 10/19/2005 11:14 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 10/20/2005 9:44 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Robinson	08845	923050	101 PCT
2. An officer			
3. POM Eric Konoski	26428	930497	101 PCT
4. SGT Carlos Fabara	01279	922317	101 PCT
5. POM John Florio	29396	930165	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Arkmeek Hunter	28401	925490	101

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: Sergeant Carlos Fabara stopped and questioned § 87(2)(b)	
B.SGT Carlos Fabara	Force: Sergeant Carlos Fabara used physical force against § 87(2)(b) at § 87(2)(b)	
C.POM Eric Konoski	Force: Police Officer Eric Konoski used physical force against § 87(2)(b) at § 87(2)(b)	
D.SGT Carlos Fabara	Abuse: Sergeant Carlos Fabara refused to provide his shield number to § 87(2)(b)	
E.POM John Florio	Abuse: Police Officer John Florio refused to provide his shield number to § 87(2)(b)	
F.POM Eric Konoski	Abuse: Police Officer Eric Konoski refused to provide his shield number to § 87(2)(b)	
G. An officer	Abuse: An officer refused to provide his/her name and/or shield number to § 87(2)(b) in front of § 87(2)(b)	
H. An officer	Discourtesy: An officer spoke obscenely and/or rudely to § 87(2)(b) in front of § 87(2)(b)	
I.POM Thomas Robinson	Abuse: Police Officer Thomas Robinson threatened to arrest § 87(2)(b) at § 87(2)(b)	
J.POM Thomas Robinson	Discourtesy: Police Officer Thomas Robinson spoke obscenely and/or rudely to § 87(2)(b) at § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POM Thomas Robinson	Abuse: Police Officer Thomas Robinson refused to provide his shield number to § 87(2)(b) at § 87(2)(b)	

## Synopsis

On October 19, 2005, § 87(2)(b) was walking towards § 87(2)(b) in Queens. During this time, § 87(2)(b) was carrying a .25 Caliber gun in his right pants pocket. § 87(2)(b) noticed an impala driving on his block at which point he entered his building. Sgt. Carlos Fabara, PO Eric Konoski and PO John Florio followed § 87(2)(b) into the building and stopped him (allegation A). § 87(2)(b) stated that Sgt. Fabara tackled him and PO Konoski elbowed him (allegations B and C). The officers eventually handcuffed § 87(2)(b) and recovered the firearm. § 87(2)(b) asked the officers for their shield numbers but they did not provide them to him (allegations D, E and F). § 87(2)(b)'s girlfriend, § 87(2)(b) arrived at the location. An officer told § 87(2)(b) to "shut the fuck up" and refused to provide his name and shield number to her (allegations G and H). § 87(2)(b) was transported to § 87(2)(b) § 87(2)(b)'s mother, § 87(2)(b) reported to the hospital and PO Thomas Robinson threatened to arrest her and according to § 87(2)(b) he also told her to "step the fuck back." (allegations I and J). § 87(2)(b) also alleged that PO Robinson refused to identify himself to her (allegation K).

§ 87(2)(g)

### Summary of Complaint

On October 19, 2005, § 87(2)(b) left a message on the CCRB call processing system and filed a complaint in regards to an incident involving her son, § 87(2)(b) stated that § 87(2)(b) was arrested and taken to § 87(2)(b) At the hospital, PO Thomas Robinson (obtained from nameplate) threatened to arrest § 87(2)(b)

On October 20, 2005, § 87(2)(b) left a message on the CCRB call processing system and filed a complaint on behalf of § 87(2)(b) and stated that the officers used excessive force during the course of his arrest. IAB forwarded log# 05-32128 to the CCRB on October 24, 2005 after a complaint was forwarded to them from 311 in regards to an incident reported by § 87(2)(b)

§ 87(2)(b) was interviewed at § 87(2)(b) on January 5, 2006 (enc.12a-c). § 87(2)(b) stated that on October 19, 2005 at approximately 6:00PM, he was walking to his building located at § 87(2)(b) from his friend's house. § 87(2)(b) was wearing a beige hoodie, jeans and denied that he was carrying anything other than his keys. § 87(2)(b) later stated that he was carrying a .25 Caliber which was concealed in his right pants pocket. § 87(2)(b) denied that he reached for his pocket and did not place his hands in his pocket. § 87(2)(b) added that he found the gun on his way home from his friend's house, 2 blocks away from his building and was eventually going to take it to the precinct in exchange for a reward.

As § 87(2)(b) approached his block, he noticed a black impala driving on § 87(2)(b). As § 87(2)(b) entered the building, PO1 (identified as Sgt. Carlos Fabara during the CCRB investigation) who was with PO Konoski and PO3 (identified as PO John Florio during CCRB investigation) approached him and said, “Yo!” At this point, § 87(2)(b) did not know that the males were officers (no badges displayed) so he started to run towards the elevator. The officers did not instruct § 87(2)(b) to stop and did not ask him for his ID. Sgt. Fabara then ran towards § 87(2)(b) leaped on him from behind, tackled him to the ground, causing him to sustain an injury to the top of his right eyebrow as his head hit the marble floor. Sgt. Fabara proceeded to punch him in the head with a closed fist while he was on top of § 87(2)(b). When § 87(2)(b) asked the officers why they were hitting him, they told him to “shut up.” PO Konoski then

elbowed § 87(2)(b) s back as he lay facedown. PO Konoski might have also punched § 87(2)(b) but he wasn't positive being that the officers were behind him. Sgt. Fabara then displayed his badge and handcuffed § 87(2)(b). § 87(2)(b) asked the three officers for their badge numbers but they all told him to "Shut up." § 87(2)(b) sustained two scratches on his right shoulder during the course of his arrest. § 87(2)(b) was not told why he was being arrested and was dragged out of the side door to the right side of the building. § 87(2)(b) denied that he was struggling with the officers and was only shielding his face with his hands in order to avoid getting hit by the officers. At this point Sgt. Fabara searched § 87(2)(b) and retrieved a .25 Caliber from his person. Several officers, whom he was unable to identify, responded to the location and picked § 87(2)(b) off of the ground however § 87(2)(b) did not hear the officers put through any radio transmissions.

After this part of the incident, § 87(2)(b) did not remember what happened because "everything started getting blurry" and he was really dizzy. He also "blacked out" but noticed that § 87(2)(b) was walking towards him, screaming and asking the officers what was going on. Approximately ten minutes later, the arresting officers threw § 87(2)(b) onto the black car and placed him into the vehicle. § 87(2)(b) s also remembers that he saw numerous cars with their lights illuminating.

§ 87(2)(b) woke up at § 87(2)(b) (possibly 8:00PM) and saw PO4 standing by his bed. § 87(2)(b) did not know if he was taken to the stationhouse before he went to the hospital. § 87(2)(b) believes that he was logged in as John Doe at the hospital because he was incoherent and unable to provide his information and he recalled that his hospital bracelet said John Doe on it. § 87(2)(b) also saw his mother at the hospital and PO4 (identified as PO Thomas Robinson during the CCRB investigation) was yelling at her to "get the fuck back" and that she would be arrested if she didn't move back. § 87(2)(b) also saw, PO5 an officer who was wearing a white shirt (unable to provide further description) at the hospital. An officer informed PO5 that § 87(2)(b) was the guy they were looking for. § 87(2)(b) was then taken to the 101 Precinct by a Russian officer (it was at this point that he noticed that his mom was outside). At the hospital, they did a CAT Scan and he did not receive any medication but bandages were put on his shoulder. § 87(2)(b) was bleeding both from his forehead and shoulder. Shortly after that, § 87(2)(b) was transported to Central Booking. § 87(2)(b) later on told § 87(2)(b) that when he was at the stationhouse, an officer grabbed his legs and dragged him into the holding cell and then he was taken to the hospital. § 87(2)(b) did not ask to be taken to the hospital and did not know who made the decision to call EMS. § 87(2)(b) did not remember seeing § 87(2)(b) at the hospital or the precinct. § 87(2)(b) later found out that he was charged with criminal possession of a weapon and resisting arrest.

### **Results of Investigation**

#### **Attempts to Locate and Interview Witnesses/Victims**

On October 26, 2005, § 87(2)(b) s girlfriend of three years, § 87(2)(b) was contacted at the number she provided to the CCRB which was met with the operator's recording that the "mailbox number was incorrect" and a contact letter was sent to her residence. On November 15, 2005, § 87(2)(b) was contacted and provided the following statement (enc.10a). § 87(2)(b) stated that on October 19, 2005 she was walking home from work at approximately 6:00PM when she saw three plainclothes officers beating up a male individual by her building and later realized that it was § 87(2)(b). The officers "manhandled" him and threw him against the wall. § 87(2)(b) said that § 87(2)(b) seemed as if "he was out of it." She asked an officer what was going on. The officer told her to "shut the fuck up" and then said, "we found this [displaying a gun] on him."

At this point one of the three officers walked away while two of the officers remained at the location. The officers continued to punch § 87(2)(b) and then dragged him from the side of the building to the front of the building and then threw him onto the patrol car and banged his head too. The officers went into § 87(2)(b) s pockets and released his keys to § 87(2)(b). § 87(2)(b) asked the officers for their names and badge numbers but the officers refused to give her the information. § 87(2)(b) ran to the precinct, which was close by, and saw the officers pulling up with § 87(2)(b) in the car as well. § 87(2)(b) saw that § 87(2)(b) was unconscious at this time and the officers continued to use physical force against § 87(2)(b) ignoring the fact that he was hurt. § 87(2)(b) was asked to leave but waited outside of the stationhouse. She then observed the officers dragging § 87(2)(b) across the stationhouse, into the cell. An ambulance

came and transported § 87(2)(b) to the emergency room of § 87(2)(b). § 87(2)(b) was informed that § 87(2)(b) was given medication to counteract his heroin overdose. § 87(2)(b) did note down more information pertaining to the incident (i.e. officer's names and vehicle number) but did not have the information on her during the phone call with the CCRB and stated that she would return a phone call to the CCRB. On December 14, 2005, § 87(2)(b) was contacted and stated that she would return a phone call to the undersigned in order to schedule an interview. On December 29, 2005, and January 5, 2006 contact letters were sent to § 87(2)(b). The letters were not returned to the CCRB and to date, § 87(2)(b) has not contacted the CCRB.

On October 26, 2005, a message was left on § 87(2)(b)'s answering machine. § 87(2)(b) returned a phone call to the CCRB on November 15, 2005 and left a message for the undersigned with an additional contact number. On November 15, 2005, § 87(2)(b) was reached at the two contact numbers she provided to the CCRB and messages were left on both answering machines. § 87(2)(b) returned a phone call to the CCRB on November 17, 2005 and provided the following telephone statement (enc.11a). § 87(2)(b) went to the hospital at approximately 8:00 PM on October 19, 2005. At the hospital, § 87(2)(b) saw § 87(2)(b) with PO1, whom she identified as PO Robinson. As § 87(2)(b) walked towards her son, PO Robinson told her that she couldn't be there and she had to leave because § 87(2)(b) was still in custody. § 87(2)(b) complied and asked PO Robinson if her son was okay and asked him for his badge number but he never provided it to her. § 87(2)(b) wrote down the number from his nameplate. The doctor told § 87(2)(b) that they were waiting for results and did not understand why § 87(2)(b) was unconscious. PO Robinson instructed § 87(2)(b) to leave otherwise she would be arrested. PO2 (male/black) told § 87(2)(b) that she would have to wait until § 87(2)(b) was released in order to speak to him. § 87(2)(b) then went to the stationhouse. One of the arresting officers told § 87(2)(b) that her son almost got killed because he brandished a weapon. § 87(2)(b) stated that she would return a phone call to the CCRB. A message was left on § 87(2)(b)'s voicemail on December 14, 2005. § 87(2)(b) immediately returned a phone call to the CCRB and scheduled an interview for January 4, 2006. § 87(2)(b) failed to appear for her scheduled interview and on January 5, 2006, a contact letter was sent to § 87(2)(b). The letter was not returned to the CCRB and to date, § 87(2)(b) has not contacted the CCRB.

### **Officer Identification**

§ 87(2)(b) stated that PO1 was a male Hispanic officer who had black hair and was light skinned. Sgt. Fabara fit the above gender/racial description and the investigation revealed that he was PO1. § 87(2)(b) provided PO2's information and identified him as PO Konoski. Process of elimination indicated that PO3 was PO Florio. § 87(2)(b) identified PO Robinson from his badge number and stated that he was with PO2, a male black officer. Roll call revealed that PO Robinson was assigned to a marked van (#5388) and the only male black officer assigned to that same vehicle was PO Hunter Arkmeek.

### **Officer Statements**

#### Sgt. Carlos Fabara (enc.14a-c)

Sgt. Carlos Fabara was interviewed at the CCRB on June 27, 2006. On October 19, 2005, Sgt. Fabara worked from 3:00PM to 11:44PM. Sgt. Fabara was the anti crime supervisor and was working in plainclothes with PO Florio and PO Konoski. Sgt. Fabara was assigned to vehicle# 532. The following is Sgt. Fabara's memo book entry: 1801- 1 under § 87(2)(b) Firearm recovered."

Sgt. Fabara stated that on October 19, 2005, he observed a male who fit the description of a suspect that robbed a Chinese food deliveryman at gunpoint of October 18, 2005, walking very "intently and nervously" towards the officers' car. Sgt. Fabara was unable to recall the description of the suspect who was wanted in connection with the robbery. Sgt. Fabara was not aware of any calls being made on October 19, 2005 in regards to the robbery. § 87(2)(b) was constantly looking over his shoulder and was scanning the area with his eyes, making him seem "more nervous than a normal person" would seem. Sgt. Fabara did not recognize § 87(2)(b) from prior interactions. As Sgt. Fabara drove closer to § 87(2)(b) he continuously adjusted his left pant pocket but Sgt. Fabara did not observe a bulge. As the officers got very close to him, § 87(2)(b) increased his pace, changed his direction and ran straight towards § 87(2)(b). § 87(2)(b) did not ring any doorbells and was waiting in the front of the building, next to a deliveryman. § 87(2)(b) remained there long enough for Sgt. Fabara to determine that § 87(2)(b) did not have any keys

and was waiting for someone to let him in. This raised Sgt. Fabara's suspicion even further, leading him to believe that § 87(2)(b) was trespassing. Sgt. Fabara stated that he did not verbalize his suspicions to his partners but he knew they were aware of the situation at hand.

Sgt. Fabara exited his vehicle and noticed that § 87(2)(b) was watching him from the corner of his eye as he continuously kept on favoring his left pocket, making "security adjustments." Sgt. Fabara explained that he did not observe a visible bulge but assumed § 87(2)(b) had a weapon because of his furtive movements. An unidentified male exited the building at which point § 87(2)(b) gained access into the building. § 87(2)(b) did not speak to anyone at this time. Sgt. Fabara then entered the building and approached § 87(2)(b) identified himself as a police officer (shield was displayed) and expressed that he wanted to talk to him. At some point, PO Konoski and PO Florio followed Sgt. Fabara and caught up with him. § 87(2)(b) immediately ran down the hallway of the first floor. Sgt. Fabara caught up to § 87(2)(b) grabbed him by the shoulders but § 87(2)(b) broke free. § 87(2)(b) ran towards a short staircase which led to the outside of the building. Sgt. Fabara again, grabbed § 87(2)(b) by the shoulders but § 87(2)(b) broke free again. § 87(2)(b) successfully exited the building at which point Sgt. Fabara finally caught up to him. Sgt. Fabara grabbed § 87(2)(b)'s arms from behind and told § 87(2)(b) to stop resisting and instructed him to place his hands behind his back. § 87(2)(b) lowered himself to the ground, sat down on the first step, and was "reaching feverishly" to get into his left pocket to retrieve the object. § 87(2)(b) refused to comply with Sgt. Fabara's instructions and continued being combative. Sgt. Fabara was standing behind § 87(2)(b) trying to restrain his arms as he again tried to put his hands in his pocket.

At this point, PO Konoski and PO Florio arrived and helped Sgt. Fabara restrain § 87(2)(b). The officers were pulling § 87(2)(b)'s arms away from his pockets. The officers then placed § 87(2)(b) on the ground, facedown. During this time, § 87(2)(b) was throwing back punches at the officers. When asked if Sgt. Fabara ever punched § 87(2)(b) he stated he might have done so being that § 87(2)(b) was being so physically hostile during the whole struggle and Sgt. Fabara was struggling for his life. The officers eventually handcuffed him. Sgt. Fabara denied that the officers slammed § 87(2)(b)'s head against the ground and denied § 87(2)(b)'s claim that he was thrown against the wall. When they searched his left pocket, a .25 caliber was recovered. The officers then conducted a full search but did not retrieve anything from § 87(2)(b)'s person. Sgt. Fabara stated that the officers did not get injured during this incident.

The officers then escorted § 87(2)(b) to their vehicle and requested a unit to transport § 87(2)(b) to the stationhouse. During this time § 87(2)(b)'s girlfriend § 87(2)(b) arrived at the location and started screaming. § 87(2)(b) asked Sgt. Fabara what was going on and he explained that § 87(2)(b) was under arrest for having a firearm, which Sgt. Fabara then displayed to her. § 87(2)(b) continued to scream and Sgt. Fabara instructed her to step back. In the meantime, the unit responded and § 87(2)(b) was transported to the 101 PCT. Sgt. Fabara stated that neither § 87(2)(b) nor § 87(2)(b) asked the officers for their names or shield numbers. Sgt. Fabara expressed that there was no reason for him or the officers to conceal their identity being that the arrest was going to be documented and the team could have been easily identified. Sgt. Fabara stated that the officers did not use any profanities.

Once the sector officers brought § 87(2)(b) into the stationhouse, he appeared to be unconscious and the officers were concerned over § 87(2)(b)'s medical condition since they were not sure if he was feigning an illness. Sgt. Fabara stated that § 87(2)(b) did not appear to have any visible injuries. As Sgt. Fabara examined § 87(2)(b) to determine if he was breathing or not, § 87(2)(b)'s girlfriend arrived at the stationhouse and started screaming that she hopes § 87(2)(b) "dies while in custody" so she can sue the police department. Sgt. Fabara was unable to conduct a thorough medical assessment to ascertain if § 87(2)(b) was breathing because § 87(2)(b) disrupted the process. § 87(2)(b) was carried to the holding cell at which point EMS was called to the precinct. Sgt. Fabara asked § 87(2)(b) if § 87(2)(b) had any medical conditions but she refused to provide § 87(2)(b)'s name and medical history. Sgt. Fabara did not know who took § 87(2)(b) into the holding cell but does recall that he directed officers to do so. Sgt. Fabara recalled that § 87(2)(b) was completely motionless and appeared to be lifeless. He denied § 87(2)(b)'s claims that § 87(2)(b) was dragged into the holding cell. Sgt. Fabara did not transport § 87(2)(b) to the hospital but recalls that at some point he did go to the hospital.

Sgt. Fabara did not interact with anyone at the hospital and could not affirm if PO Konoski and PO Florio were present. Sgt. Fabara did not transport § 87(2)(b) back to the stationhouse and did not transport him to central booking. Sgt. Fabara did not see § 87(2)(b)'s mother at the hospital. Sgt. Fabara has no recollection of PO Robinson being at the hospital and did not hear an officer threaten anyone with arrest and did not hear any officer use any profanities at the hospital.

PO Eric Konoski (enc.18a-b)

PO Eric Konoski was interviewed at the CCRB on June 13, 2006. On October 19, 2005 PO Konoski was working with PO Florio and Sgt. Fabara and was assigned to anti crime. PO Konoski was working in plainclothes and was operating a black unmarked vehicle. PO Konoski did not have any memo book entries pertaining to this incident.

On October 19, 2005, PO Konoski was driving 10 MPH on § 87(2)(b) and observed § 87(2)(b) walking towards him from the southeast corner. PO Konoski established that § 87(2)(b) was walking alone and that he did not recognize him from prior interactions. PO Konoski observed a bulge in § 87(2)(b)'s right pocket. PO Florio explained that his window was down at the time and the vehicle was easily identified as a department auto. At the sight of the officers, § 87(2)(b) began to make furtive movements by looking over his shoulder and made numerous movements towards his right pocket but never reached into the pocket. PO Konoski told his partners about his observation at which point they decided to approach § 87(2)(b). All three officers exited their vehicle and PO Konoski was able to recall that his badge was displayed around his neck. As the officers went to stop § 87(2)(b) and identified themselves as the police, he ran into § 87(2)(b). § 87(2)(b) gained entry into the building through the front entrance and just opened the door without using any keys. § 87(2)(b) ran through the front lobby and then exited through the side door. During this time no one else was in the vicinity.

The officers caught up to him outside at which time § 87(2)(b) became combative and started to fight them. PO Konoski explained that § 87(2)(b) started to kick and throw punches at all of the officers. § 87(2)(b) attempted to pull the object out of his pocket while fighting the officers as they attempted to restrain his arms. PO Konoski recalled that during the struggle, because of the momentum, § 87(2)(b) was on the ground at one point but PO Konoski could not recall how § 87(2)(b) landed. The officers eventually placed § 87(2)(b) in handcuffs and when PO Konoski searched him, he obtained a semi-automatic .25 caliber out of the right pants pocket. No other contraband was retrieved. PO Konoski did not observe any injuries on § 87(2)(b) and confirmed that none of the officers were injured. PO Konoski denied that the officers punched § 87(2)(b) and established that physical force was only used when the officers were attempting to handcuff § 87(2)(b). PO Konoski denied § 87(2)(b)'s claims that § 87(2)(b) was thrown against the wall or the car. The officers walked § 87(2)(b) to their vehicle at which time § 87(2)(b)'s girlfriend approached them and started screaming. The officers explained to her that § 87(2)(b) was under arrest for possession of a loaded firearm. PO Konoski stated that he did not recall anyone ask the officers for their names or shield numbers.

A caged patrol car was called to the location and § 87(2)(b) was removed to the precinct. PO Konoski placed § 87(2)(b) in the RMP but he and his partners did not transport § 87(2)(b) to the stationhouse. PO Konoski denied that the officers used any profanities during the incident. PO Konoski found out that en route to the stationhouse, § 87(2)(b) had a seizure and so Sgt. Fabara called EMS. Sgt. Fabara and PO Konoski carried § 87(2)(b) to the holding cell area from the front of the stationhouse so EMS would be able to administer the medical evaluation in private. PO Konoski recalled that § 87(2)(b) arrived at the stationhouse but he did not interact with her and denied that § 87(2)(b) was dragged into the holding cell by his legs. PO Konoski explained that § 87(2)(b) was not fully conscious.

EMS arrived and § 87(2)(b) was removed to § 87(2)(b) and when he returned to the stationhouse a few hours later, he told PO Konoski that he has a history of seizures and had a seizure en route to the stationhouse right after his arrest. § 87(2)(b) also told PO Konoski that he carries the gun for protection and usually hides it in the bushes. PO Konoski did not go to the hospital. PO Konoski was unable to recall who transported § 87(2)(b) to Central Booking. PO Konoski did not see § 87(2)(b) at the stationhouse.

PO John Florio (enc.16a-b)

PO John Florio was interviewed at the CCRB on July 6, 2006. On October 19, 2005, PO Florio was working in plainclothes with PO Konoski and Sgt. Fabara from 3:00PM to 11:30PM. PO Florio was assigned to anti crime and was utilizing an unmarked black Chevy Impala. The following is PO Florio's memo book entry: " 1801: 1 under for PO Konoski @ § 87(2)(b) . 1930: Out to § 87(2)(b) w/ injured prisoner. 2315: Out to Penninsula with injury."

PO Florio stated that he was driving southbound on § 87(2)(b) at which point Sgt. Fabara instructed him to "slow down" the vehicle. Sgt. Fabara exited the vehicle and chased § 87(2)(b) into § 87(2)(b) PO Florio did not know what Sgt. Fabara had observed and did not notice § 87(2)(b) before Sgt. Fabara instructed him to slow down. PO Florio did not know how § 87(2)(b) gained entry in to the building and only recalled the he entered through the front entrance. At this point, PO Florio and PO Konoski jumped out of the vehicle and caught up with Sgt. Fabara, who at this point, had chased § 87(2)(b) out the side exit. PO Florio was unable to recall § 87(2)(b)'s description but recalled that during the beginning of his tour, he was told that there were two robberies that took place on October 18, 2005 and the perpetrator fit § 87(2)(b)'s description.

When PO Florio exited the side door, he saw Sgt. Fabara on the ground, wrestling with § 87(2)(b) Sgt. Fabara repeatedly said, "He's got a gun, he's got a gun." § 87(2)(b) was kicking his legs and throwing punches at the officers. § 87(2)(b) was also trying to reach into one of his pants pocket (unable to specify which one) in an attempt to retrieve an object. PO Florio observed a "huge bulge" which he assumed was a firearm since Sgt. Fabara had already determined that § 87(2)(b) had a gun on his person. PO Florio grabbed one of § 87(2)(b)'s arms and handcuffed him while Sgt. Fabara and PO Konoski tried to restrain his other arm. PO Florio did not recall anyone punching § 87(2)(b) but stated that there definitely was a struggle and the officers were wrestling him. The officers eventually subdued § 87(2)(b) and handcuffed him. An officer searched § 87(2)(b) and recovered a firearm from his pocket. § 87(2)(b) was escorted to the front of the building and during this time, § 87(2)(b) was still kicking and was hostile. § 87(2)(b) did mention that he was going to have a seizure but he never had one in PO Florio's presence. PO Florio did not observe any visible injuries on § 87(2)(b) PO Florio sustained an injury to his knee (swelling and bruising) which he was later treated for at § 87(2)(b) . PO Konoski stated that § 87(2)(b) did not ask the officers for their names and shield numbers. PO Florio denied that any officer threw § 87(2)(b) against the wall. PO Florio recalled that since § 87(2)(b) was still combative, he had to be placed into the RMP and stated that no one threw § 87(2)(b) against the vehicle. At some point, § 87(2)(b) came to the location but PO Florio did not know she was § 87(2)(b)'s girlfriend until he saw her at the stationhouse. PO Florio could not recall if anyone interacted with § 87(2)(b) in front of § 87(2)(b)

A marked RMP responded to the location and transported § 87(2)(b) to the precinct. When PO Florio arrived at the stationhouse, the transporting officers informed him that § 87(2)(b) was unresponsive. Someone carried § 87(2)(b) into the stationhouse by his arms. § 87(2)(b) also came to the stationhouse too. PO Florio acknowledged that § 87(2)(b) was unresponsive but did not know if he was unconscious. § 87(2)(b) was taken to the holding cell area at which time EMS arrived and § 87(2)(b) was transported to § 87(2)(b) PO Florio stated that during the time § 87(2)(b) was at the stationhouse, no one dragged him on the ground and pushed him around.

PO Florio remembered that he went to the hospital to supervise § 87(2)(b) but he could not recall how he got to the hospital. § 87(2)(b) was at the hospital she continuously kept on coming into the emergency room. PO Florio instructed § 87(2)(b) to remain outside and told her that she was not allowed in the emergency room. PO Florio was at the hospital by himself and stated that Sgt. Fabara and PO Konoski visited him occasionally. The doctor told PO Florio that § 87(2)(b) feigned a seizure. PO Florio did not see § 87(2)(b)'s mother at the hospital. PO Florio then went to § 87(2)(b) and was treated for his injuries. PO Florio went back to § 87(2)(b) to pick § 87(2)(b) up and the doctors told him that § 87(2)(b) feigned an illness. PO Florio did not have any interactions with § 87(2)(b) at the hospital. No officers used any profanities and no threat of arrests was made at the hospital.



PO Thomas Robinson (enc.20a-b)

PO Thomas Robinson was interviewed at the CCRB on August 25, 2006. On October 19, 2005, PO Robinson worked in uniform from 3:00PM to 11:35PM and he was assigned to CPU beat#9. PO Robinson did not recall who he was working with and was assigned to a marked van. The following is PO Robinson's memo book entry regarding the incident: "2130: Guard Hosp Pris § 87(2)(b). John Doe A/C collar."

PO Robinson stated that he was guarding a prisoner, who was arrested by the anti crime team for possession of a firearm, at § 87(2)(b). The defendant was logged in as John Doe. At approximately 9:30PM, a marked vehicle dropped PO Robinson off at the hospital at which time he relieved another officer's post. PO Robinson was unable to recall who these officers were. PO Robinson stated that no other officers were at the location and he did not interact with the anti crime team regarding the arrest. The doctors told PO Robinson that § 87(2)(b) was faking the illness he claimed to have. PO Robinson did not know if the defendant suffered from a seizure. PO Robinson stayed at the hospital for approximately 2 hours.

During these two hours, a black female who claimed to be the defendant's mother but refused to further identify herself, came into the ER. PO Robinson informed the female that if she wanted to see the defendant, she had to go to the stationhouse and get permission from the desk officer. The female was very "abrasive" and yelled, "That's my fucking son and I want to fucking see him." PO Robinson told § 87(2)(b) that he needed to see her ID and again instructed her to go see a desk officer in order for her to see her son. The female refused to produce her ID and continued to act belligerent. PO Robinson informed her that if she did not leave, she would be arrested. The female did not ask PO Robinson for his name and shield number and after five minutes, she eventually complied with PO Robinson's orders and left the ER. PO Robinson stated that he remained professional and was courteous when he spoke to the female. PO Robinson denied that he used any profanities. PO Robinson stated that during the time he was at the hospital, the defendant laid there with his eyes closed and he did not interact with him. PO Robinson did not observe any injuries on the defendant. PO Robinson established that he never saw the defendant before or after he was at the hospital. PO Robinson never saw or interacted with any other people who claimed that they knew the defendant. Another officer relieved PO Robinson's post since § 87(2)(b) was still in custody but PO Robinson could not recall who this officer was.

PO Arkmeek Hunter (enc.22a-b)

PO Arkmeek Hunter was interviewed at the CCRB on August 25, 2006. On October 19, 2005, PO Hunter worked from 4:00PM to 12:35AM and was assigned to the community policing unit in van #5388. PO Hunter was dressed in uniform and was working with Sgt. James Geisler, PO Michael Greenidge and PO Timothy Hinteman. PO Hunter did not have any memo book entries regarding the incident.

PO Hunter stated that on October 19, 2005, he was never at § 87(2)(b) and did not work with PO Robinson on that day. PO Hunter was not present for any arrests made that day by the anti crime team and did not interact with anti crime team. Upon reviewing the roll call, PO Hunter stated that not all of the officers who were assigned to his van were working with him that day and there was probably a post change.

**Police Documents**

The 101 PCT command log revealed that § 87(2)(b) was logged in as John Doe at 6:05PM on October 19, 2005. It has been noted that § 87(2)(b) was taken to § 87(2)(b) via EMS along with PO Florio. § 87(2)(b) was brought back to the stationhouse at § 87(2)(b) and was taken to Central Booking at 4:10PM on October 20, 2005 (enc.26a). The complaint report stated that § 87(2)(b) was observed walking towards § 87(2)(b) at which time he continuously made furtive movements towards a bulge in his right front pants pocket. § 87(2)(b) did also look back several times and intently watched the police (enc.32a-b). The OLBS indicated that § 87(2)(b) was observed holding a bulge in his right front pants pocket. Upon approaching the defendant, he did flee on foot into § 87(2)(b). Upon apprehending the defendant, he did resist arrest by flailing his arms and refused to be handcuffed. A search incidental to the arrest revealed a loaded black .25 Caliber semi-automatic pistol. PO Konoski was the arresting officer and it has been noted that the officers used physical force to overcome assault (enc.25a-c). The property clerk's invoice established that a black .25 caliber pistol and a .25 bullet were vouchered (enc.30a). The criminal

court complaint revealed that a loaded .25 semi-automatic pistol was recovered from § 87(2)(b)'s right pants pocket. It has been noted that § 87(2)(b) flailed his arms violently in an attempt to resist the arrest (enc.31a-b). The stop and frisk log did not produce any reports prepared in connection with this incident (enc.27a-c). The 101 Precinct tour 3 roll call indicated that Sgt. Fabara, PO Florio and PO Konoski were assigned to anti crime. Roll call also revealed that PO Robinson was assigned to CPU in van # 5388 and PO Hunter was assigned to Conditions in the same van (enc.28a-f).

### **Medical Records**

The FDNY Ambulance Call Report indicated that § 87(2)(b) was unconscious and unresponsive. The officer at the scene stated that while the patient was in police custody, he expressed that he felt a seizure coming on. The chief complaint was noted as "unconscious." It has also been noted that the witnesses at the scene deny seeing seizure activity from patient (enc.23a-c).

Medical Records from § 87(2)(b) revealed that § 87(2)(b) was logged in at the hospital as John Doe. The chief complaint has been noted as "unresponsive in NYPD custody." The patient was brought in unresponsive but he acutely resisted stimuli. Ammonia inhalants were used which brought tears to patient eyes but he would not open them. Patient had no noticeable trauma to body and there were no head contusions or concussions. There was no apparent reason for patient's unresponsive state. The diagnosis was noted as "unresponsive, cannabis and alcohol abuse." There were no physical injuries documented on the medical records. It has been noted that at 9:00PM, a female who claimed to be § 87(2)(b)'s wife, was at the hospital and refused to identify herself and the patient. Another female, who claimed to be the patient's mother refused to identify herself as well and withheld the patient's information also (enc.24a-q).

### **Status of the Criminal Charges**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **CCRB Histories**

§ 87(2)(b) (enc.7a)

To date, § 87(2)(b) has not filed any CCRB complaints.

#### Sgt. Carlos Fabara (enc.3a-d)

Sgt. Fabara, in his 8<sup>th</sup> year on the force, has 6 substantiated allegations in his CCRB history. In case number 200508693, it was recommended that Sgt. Fabara receive charges for four abuse of authority allegations. In case number 200512992, it was recommended that Sgt. Fabara receive charges for two abuse of authority allegations. The NYPD disposition is not available at this time. There are currently 8 open CCRB cases in which Sgt. Fabara is a subject officer.

#### PO Eric Konoski (enc.4a)

PO Konoski, in his 4<sup>th</sup> year on the force, has two substantiated allegations in his CCRB history where it was recommended that he receive charges. The NYPD disposition is not available at this time. There are currently 4 open CCRB cases in which PO Konoski is a subject officer.

#### PO John Florio (enc.6a)

PO Florio, in his 4<sup>th</sup> year on the force, has two substantiated allegations in his CCRB history where he received instructions for one of the allegations. There are currently 3 open CCRB cases in which PO Florio is a subject officer.

### **Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Conclusions and Recommendations**

### **Undisputed Facts**

It is not in dispute that on October 19, 2005 the 101 Precinct anti crime team arrested § 87(2)(b) for criminal possession of a weapon. It is also not in dispute that § 87(2)(b) had a .25 caliber on his person. It is also not in dispute that PO Robinson, at § 87(2)(b) informed § 87(2)(b) that she could be arrested. At issue is whether or not the officers used physical force against § 87(2)(b) refused to provide their shield numbers to § 87(2)(b) and if they used profanities against him.

### **Credibility**

§ 87(2)(g) § 87(2)(b)'s medical records indicated that he was unresponsive and tested positive for marijuana and alcohol. § 87(2)(b) claimed that he had a seizure, however medical records did not indicate this and also confirmed that § 87(2)(b) was actively resisting the numerous tests the hospital conducted while he was unconscious. During his interview with the CCRB, § 87(2)(b) stated that he was not carrying anything and then later expressed that he found a firearm and was going to return it to the precinct in exchange for a reward. § 87(2)(g) § 87(2)(b) told the officers that he carries the firearm for protection.

§ 87(2)(g)

### **Allegations Not Pleaded**

§ 87(2)(g)

### **Allegation A: Sergeant Carlos Fabara stopped and questioned § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) Sgt. Fabara observed § 87(2)(b) make furtive movements and “security adjustments” towards his left pants pocket. At the sight of the officers, § 87(2)(b) went into the building and failed to comply with the officers’ orders once he was stopped. These actions suggested that § 87(2)(b) was trying to hide something from the officers and also raised the officers’ level of suspicion. In New York Search and Seizure, Kamins states that “under certain circumstances, courts will find that a police officer had a reasonable suspicion based, in part on the defendant’s furtive, evasive, strange or suspicious behavior.” § 87(2)(g)

### **Allegation B: Sergeant Carlos Fabara used physical force against § 87(2)(b)**

### **Allegation C: Police Officer Eric Konoski used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that Sgt. Fabara tackled him to the ground and punched him. § 87(2)(b) alleged that PO Konoski elbowed him and could have possibly punched him as well. The officers established that § 87(2)(b) was feverishly reaching for his right pants pocket while they were trying to control him. Sgt. Fabara established that he could have punched § 87(2)(b) during the struggle because § 87(2)(b) was being combative. The officers established that § 87(2)(b) was throwing back punches and kicking them as they attempted to gain control of his arms. § 87(2)(g)

§ 87(2)(g)

**Allegation D: Sergeant Carlos Fabara refused to provide his shield number to § 87(2)(b)**

**Allegation E: Police Officer John Florio refused to provide his shield number to § 87(2)(b)**

**Allegation F: Police Officer Eric Konoski refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) stated that during the course of his arrest, he asked all three officers for their shield numbers and was told to “shut up.” The officers denied that § 87(2)(b) asked them for their information. § 87(2)(g)

**Allegation G: An officer refused to provide his/her name and/or shield number to § 87(2)(b) in front of § 87(2)(b)**

**Allegation H: An officer spoke obscenely and/or rudely to § 87(2)(b) in front of § 87(2)(b)**

§ 87(2)(b) alleged that an officer refused to identify himself upon her request at the arrest location and that an officer also told her to “shut the fuck up.” § 87(2)(b) did not make the above allegations

§ 87(2)(g)

**Allegation I: Police Officer Thomas Robinson threatened to arrest § 87(2)(b) at § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) both alleged that PO Robinson threatened to arrest § 87(2)(b) when she visited § 87(2)(b) at § 87(2)(b). PO Robinson established that he was the only officer at the hospital when he was guarding § 87(2)(b). PO Robinson established that § 87(2)(b) was uncooperative, abrasive and refused to identify herself. Medical records from § 87(2)(b) also confirmed that § 87(2)(b) was uncooperative. PO Robinson stated that he informed § 87(2)(b) that she needed to get special permission from the desk officer in order to see § 87(2)(b) while he was still in police custody. § 87(2)(b) refused to cooperate and became belligerent. Patrol Guide Procedure 210-02 states that the desk officer from the arrest precinct can “authorize visits to prisoner by member of family” under certain conditions. § 87(2)(g)

**Allegation J: Police Officer Thomas Robinson spoke obscenely and/or rudely to § 87(2)(b) at § 87(2)(b)**

§ 87(2)(b) alleged that § 87(2)(b) was instructed to “get the fuck back” when she was at the hospital. In the message § 87(2)(b) left on the CCRB call processing system and during a telephone conversation with the CCRB on November 17, 2005, § 87(2)(b) did not make the above allegation. § 87(2)(g)

**Allegation K: PO Thomas Robinson refused to provide his shield number to § 87(2)(b) at § 87(2)(b)**

§ 87(2)(b) alleged that PO Robinson refused to identify himself when she reported to § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: